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The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

Paper No. 18

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY ROY BLOCK and ROBERT MILLER

Appeal No. 2005-0470
Application No. 09/173,090¹

ON BRIEF

Before BARRETT, GROSS and SAADAT, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1-63, which are all of the claims pending in this application.

We reverse.

¹ Application for patent filed October 15, 1998.

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BACKGROUND

Appellants' invention relates to communications infrastructures for use on computer clusters without relying on a dedicated Local Area Network (LAN). The nodes of the cluster may coexist on a public network, while they remain unaccessible to public nodes.

Representative independent claim 1 is reproduced as follows:

1. An apparatus, said apparatus being a member of a cluster, said apparatus comprising:

at least one processor;

a memory coupled to at least one processor;

a cluster servicer residing in said memory, said cluster servicer facilitating cluster messaging, with at least one other apparatus within said cluster without requiring an intervening dedicated local area network to said at least one other apparatus.

The following reference is relied on by the Examiner:

Attanasio et al. (Attanasio) 5,371,852 Dec. 6, 1994

Claims 1-29, 31-35 and 37-63 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Attanasio.

Claims 30 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Attanasio.

We make reference to the answer (Paper No. 14, mailed December 15, 2003) for the Examiner's reasoning, and to the brief

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(Paper No. 12, filed September 15, 2003) for Appellants' arguments thereagainst.

OPINION

Initially, we note Appellants' indication of the grouping of claims 1, 4-39 and 42-63 as Group I, claims 2 and 40 as Group II and claims 3 and 41 as Group III (brief, page 3). However, we will consider the claims in separate groups according to their grounds of rejection and as argued by Appellants in the argument section of the brief.

With respect to the 35 U.S.C. § 102 rejection of the claims, Appellants argue that claim 1 requires a cluster service that facilitates cluster messaging with at least one other apparatus within said cluster without requiring an intervening dedicated local area network (brief, pages 3 & 4). Referring to page 2, lines 16-19 of the specification, Appellants point out that the messages are passed amongst computer systems that are members of the same cluster in contrast with a non-cluster computer using the cluster as a computing resource (brief, page 4). Appellants further argue that Attanasio discloses computer to cluster communication, not cluster node to cluster node communication (id.). Additionally, Appellant questions the Examiner's characterization of the cluster server or gateway in Figure 2 of

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Attanasio as the claimed messaging between nodes in a cluster and argues that the "Host" is not a cluster node but uses the single system image provided by the cluster which, at best, indicates that Host 130 itself could be a cluster (brief, pages 4 & 5).

In response to Appellants' arguments, the Examiner asserts that the interconnect 110, which connects nodes 105 through 109, is specified as a high speed interconnect or link and concludes that network 110 must not be a dedicated local area network (answer, page 4). The Examiner further points to Figure 4 of Attanasio and argues that since the messages are routed through node 109 to nodes 105-108 via interconnect 110, the node-to-node messaging occurs without a dedicated LAN (answer, page 5).

A rejection for anticipation requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Upon our review of Attanasio, we remain unconvinced by the Examiner's position that the relied on portions of the reference and Figure 2 show the claimed messaging within the cluster

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without requiring an intervening dedicated LAN. In particular, Attanasio discloses that the nodes within cluster 200 are connected together by high speed link shown as interconnect 110 which could be a network or any other link commonly used in the art (col. 6, lines 22-24). Node 109 is, in fact, designated as the gateway which receives all the messages sent for any of the cluster nodes and reroutes them to the corresponding node through interconnect 110 (col. 7, lines 25-49). Therefore, we find that in characterizing the communication between nodes 105-109 within the cluster 200 as one without requiring a dedicated LAN, the Examiner improperly concludes that using a token ring conclusively establishes absence of a dedicated LAN.

Rejections based on § 102 must rest on a factual basis wherein the burden of proof is placed "on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984) (citing In re Warner, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d

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at 1017, 154 USPQ at 178 (CCPA 1967). Although Appellants mostly argue the connection of Host 130 with the nodes in cluster 200, the Examiner's speculation that using a router precludes existence of a dedicated LAN disfavors the Examiner's position. Other independent claims also require cluster communications without the need for a dedicated LAN which is not clearly established as being disclosed by Attanasio. Therefore, in view of the Examiner's failure to establish that Attanasio prima facie anticipates the claimed subject matter of the independent claims, the 35 U.S.C. § 102(b) rejection of claims 1-29, 31-35 and 37-63 cannot be sustained.

Turning now to the 35 U.S.C. § 103 rejection of claims 30 and 36, we note that the Examiner further relies on modifying the step of updating information in tables of Attanasio for arriving at the claimed updating data as maximum transmission unit. However, since the Examiner has not pointed to any disclosure in Attanasio that establishes the recited cluster communication without the need for a dedicated LAN, the suggested modifications cannot overcome the basic deficiencies of the applied reference with respect to the independent base claims. Accordingly, we do not sustain the 35 U.S.C. § 103 rejection of claims 30 and 36 over Attanasio.

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CONCLUSION

In view of the foregoing, the decision of the Examiner to reject claims 1-29, 31-35 and 37-63 under 35 U.S.C. § 102 and claims 30 and 36 under 35 U.S.C. § 103 is reversed.

REVERSED



LEE E. BARRETT
Administrative Patent Judge


ANITA PELLMAN GROSS
Administrative Patent Judge

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MAHSHID D. SAADAT
Administrative Patent Judge

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